

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE

Assigned on Briefs December 18, 2007

STATE OF TENNESSEE v. ANTHONY DURAN HINES

**Direct Appeal from the Circuit Court for Montgomery County
No. 40501084 John H. Gasaway, III, Judge**

No. M2007-00493-CCA-R3-CD - Filed May 12, 2008

The defendant, Anthony Duran Hines, was convicted of burglary, a Class D felony, and was sentenced to twelve years in confinement as a career offender. On appeal, he argues that the trial court abused its discretion by allowing the police officer to testify as an expert regarding observations made about the defendant and crime scene immediately following the defendant's arrest. After careful review, we conclude that the trial court did not abuse its discretion. We affirm the judgment from the trial court.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Affirmed

JOHN EVERETT WILLIAMS, J., delivered the opinion of the court, in which THOMAS T. WOODALL and J.C. McLIN, JJ., joined.

John T. Maher, Clarksville, Tennessee, for the appellant, Anthony Duran Hines.

Robert E. Cooper, Jr., Attorney General and Reporter; James E. Gaylord, Assistant Attorney General; John Wesley Carney, Jr., District Attorney General; and John E. Finklea, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

Police observed the defendant trying the locks of a vehicle and residence on Crossland Avenue in Clarksville. They watched the defendant approach the victim's residence at 925 Crossland Avenue, look around, and enter the yard out of their view. A few minutes later, the defendant returned to the street, looked up and down the street, and returned to the yard. Within a few seconds, he returned to the street carrying a saw and an air compressor and was quickly arrested.

The victim testified that he kept the saw and compressor in a shed on his property. He said that it was raining on the day of the incident and recalled that he had run an errand when he received

a call from the police, asking that he return home. The victim said that he usually kept the shed locked and closed but could not recall specifically if it was locked that day. He said that he was not using either item on the day they were taken by the defendant.

A police detective, Martin Hall, testified that he observed marks, consistent with pry marks on the door of the shed. He also observed puddles of water and shoe prints in the shed and noticed that the shoe prints were the same design as the tennis shoes of the defendant. He also testified that the saw and compressor found in the defendant's possession were dry, although it had rained on the day of the incident.

The defendant testified that he did not enter the shed but acknowledged that he took the tools from the backyard.

Analysis

The defendant argues that the trial court abused its discretion by allowing the police detective to testify about his observations regarding the marks on the shed and the shoe prints observed at the scene. The abuse of discretion standard contemplates that, before reversal, the record must show that a judge "applied an incorrect legal standard, or reached a decision which is against logic or reasoning that caused an injustice to the party complaining." State v. Shirley, 6 S.W.3d 243, 247 (Tenn. 1999); State v. Shuck, 953 S.W.2d 662, 669 (Tenn. 1997). The defendant contends that the trial court abused its discretion in qualifying the detective as an expert witness without an appropriate foundation. The State argues, and we agree, that the detective was not offered as an expert witness and that he did not testify to matters beyond that of an average person.

Tennessee Rule of Evidence 701(a) permits a witness to give testimony in the form of opinions so long as those opinions are rationally based on the perception of the witness and are helpful to provide a clear understanding of the witness's testimony or the determination of a fact in issue. If a juror can rely on his or her personal experience or otherwise obtained knowledge to understand why such testimony is relevant or probative, it may be offered by a layperson. State v. Murphy, 953 S.W.2d 200, 203 (Tenn. 1997). Here, the witness merely testified that the victim's shed door had marks on it that looked like pry marks. The witness used the term "striation" to characterize the marks, but it is clear from his testimony that his intent was to say the door had been tampered with and bore the marks of the forced entry.

With regard to the footprints, it was not necessary that the witness be an expert in footprint analysis. He simply testified that the shoe prints in the victim's shed looked like tennis shoes and that the tread design of the defendant's shoes looked like the shoe prints. It is likely that an average person entering the shed after the rain would notice wet shoe print marks on the floor of the shed if they, in fact, existed. Here, the officer testified that he saw shoe prints in the shed and that the prints were similar to those of the defendant's shoes. It is not necessary that the witness be an expert to testify as to shoe or footprint identification. The witness testified to things that would be common knowledge; therefore, it was unnecessary that he be qualified as an expert to testify to his

observations at the crime scene.

Conclusion

Based on the foregoing and the record as a whole, we affirm the judgment from the trial court.

JOHN EVERETT WILLIAMS, JUDGE